

1. PARTIES

The Montana Department of Corrections (DEPARTMENT) and **Shad Bailey (CONTRACTOR)** enter into this Contract (**09-036-MCE**). The party's names, addresses, and telephone numbers are as follows:

Montana Department of Corrections
Montana Correctional Enterprises (MCE)
1539 11th Avenue
PO Box 201301
Helena, MT 59620-1301
(406) 444-3930

Shad Bailey

1707 Park Garden Road
Great Falls MT 59404
(406) 727-6443

DEPARTMENT AND CONTRACTOR, AS PARTIES TO THIS CONTRACT AND FOR THE CONSIDERATION SET FORTH BELOW, AGREE AS FOLLOWS:

1.1 Background

DEPARTMENT receives a grant from the United States Department of Education for Workplace and Community Transition Training for Incarcerated Individuals (under the Higher Education Opportunity Act, Public Law 110-315). This grant provides funds to secure postsecondary education services from a qualifying postsecondary institution for qualifying Montana offenders (hereafter "student or offender") housed in prison and prerelease centers.

1.2 Eligibility

Congress, along with the United States Department of Education, defines eligibility requirements for this program. Only offenders who meet the education, age, offense, conduct, and estimated date of release requirements will be eligible to participate. Montana Department of Corrections will screen interested applicants by requiring an application and verifying data provided by offenders.

1.3 Participation

To be eligible for the training, in addition to the requirements set by the US Department of Education, offenders must commit to full participation in both classroom exercises and homework assignments. In addition, offenders who meet all grant eligibility requirements may be eligible to continue their secondary education for up to seven years, so long as federal funds are available.

Failure to attend the scheduled classes or fully participate in the classroom exercises will be cause for termination from the program and offenders may receive a disciplinary write-up, if appropriate.

It is the goal of DEPARTMENT that all offenders successfully complete the program and remain eligible for further education classes through a Montana-based college or university.

1.4 Success Rates

In accepting federal funds, DEPARTMENT has agreed to provide information on each offender's academic, employment, and reentry successes. To participate in the program, offenders must be willing to provide updates (at least quarterly) to DEPARTMENT regarding education, employment, and recidivism. This may be done by calling offenders or probation and parole officers.

1.5 Evaluation

Evaluation requirements are set forth by Congress and are included in federal grant guidance and correspondence.

2. DUTIES/RESPONSIBILITIES OF BOTH PARTIES

A. DEPARTMENT agrees to provide CONTRACTOR with:

1. An orientation regarding federal grant evaluation requirements and Project Offender Work and Education Ready (POWER) program design. This orientation will be scheduled at a mutually-agreed upon day and time;
2. Contact information for each secure facility's education director, as well as a primary DEPARTMENT coordinator;
3. Facility audits that will assist with program evaluation;
4. Applicable federal guidelines;
5. Contact information for each postsecondary institution providing services for the purpose of securing enrollment and course completion data;
6. Relevant correspondence from the federal government regarding grant management and evaluation, including but not limited to the annual data sheet; and
7. Scheduling of quarterly conference calls to address the program and needed assistance.

B. CONTRACTOR agrees to:

1. Provide DEPARTMENT with an evaluation of the POWER program and related contracts recently implemented by DEPARTMENT. Specific evaluation requirements will be provided to CONTRACTOR and are set forth under federal grant guidance and correspondence.
2. Attend an orientation regarding federal grant requirements hosted by DEPARTMENT. This orientation will be scheduled at a mutually-agreed upon day and time;
3. Maintain on-going communication with DEPARTMENT, including but not limited to, quarterly conference calls;
4. Account for and maintain reasonable records of Contract performance;
5. Produce and distribute an electronic copy of three (3) client surveys by July 30, 2009 - one for each of the following target audiences: contracted service providers/ teachers; key DEPARTMENT facility/program staff; and participating offenders. Each survey will be a one-page survey with 5-7 Likert scale questions, plus opportunity for comment. The surveys must be approved by DEPARTMENT POWER coordinator prior to distribution. CONTRACTOR may also conduct optional focus groups live or via Vision Net;
6. Submit a completed, POWER status report to DEPARTMENT POWER Coordinator on a quarterly basis. This report shall include, but is not limited to: information on trends,

successes, and recommendations regarding service delivery and offender completion. These reports will be due on June 30, 2009; September 30, 2009; December 31, 2009; and March 31, 2010;

7. Complete a grant data sheet according to federal requirements, as required by the US Department of Education. A second control group data sheet will be completed for a random control group of equal numbers to participants. The control group will include offenders with similar characteristics (age, offense, high school education). This sheet is typically due in December of each year. (A sample data sheet from prior years is attached); and
8. Submit a final program summary evaluation to DEPARTMENT POWER Coordinator by March 31, 2010. The following information and data must be included: results of client surveys, participant enrollment trends, participant completion rate trends, successes, and recommendations for improvements.

C. DEPARTMENT and CONTRACTOR further agree to:

Comply with all state and federal requirements, including but not limited to those defined in:

1. Section 49-3-207, Montana Code Annotated; and
2. OMB Circular A-106, OMB approval No, 0348-0040.

3. COMPENSATION/BILLING

DEPARTMENT shall compensate CONTRACTOR for successful delivery of services, provided pursuant to Section 2, in the following manner:

- A. **\$500.00** upon receipt of final contract signature and receipt of required tax documentation; **\$500.00** upon attendance and completion of a two-hour orientation; **\$500.00** upon approval and distribution of all three (3) client survey forms; **\$500.00** upon receipt and approval of each quarterly POWER status report; **\$500.00** upon receipt and approval of both the grant data sheet and control group data sheet; and **\$999.00** upon receipt and approval of the final program evaluation.
- B. Total services billed **shall not exceed \$4,999.00** during the contract period without prior written approval from DEPARTMENT.
- C. DEPARTMENT agrees to pay CONTRACTOR within 30 days following receipt of a correct invoice.
- D. DEPARTMENT may withhold payments to CONTRACTOR if CONTRACTOR has not performed in accordance with the terms of this Contract.
- E. The Contract number must be referenced on all invoices and correspondence pertaining to this Contract.
- F. This Agreement is contingent upon availability of federal grant funds under CFR 84.331.

4. AGENCY ASSISTANCE

To the extent possible, CONTRACTOR shall use its own facilities and equipment in providing the services set forth in Section 2. However, the parties recognize that services provided to DEPARTMENT may occur within the confines of a secure correctional facility necessitating the use of DEPARTMENT facilities and equipment including, but not limited to, access to inmate records, work space within a correctional facility, and telephone service (e.g., Montana State Prison and Montana Women's Prison do not allow wireless phones within facility).

5. TIME OF PERFORMANCE

This Contract shall be effective from the date of final contract execution through April 30, 2010.

Upon expiration of this Contract, and in the absence of a new written agreement, the terms listed herein shall continue to govern the agreement between the parties until such time as a new Contract is signed.

6. LIAISONS AND NOTICE

- A. Larry Burke, MCE Vocational Director (406-846-1320, ext. 2425), 350 Conley Lake Road, Deer Lodge MT 59722, or successor serves as DEPARTMENT'S liaison.
- B. Shad Bailey (406-727-6443), 1707 Park Garden Road, Great Falls MT 59404 or successor serves as CONTRACTOR'S liaison.
- C. All notices and invoices required in this Contract shall be in writing, properly addressed to the liaison in (A) and (B) above, and mailed first-class, postage prepaid. All notices sent via U.S. Postal Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

7. OWNERSHIP AND PUBLICATION OF MATERIALS

All materials CONTRACTOR develops or utilizes (i.e., reports, spreadsheets, etc.) in performing the services set forth in Section 2 above shall be the sole property of DEPARTMENT.

8. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Neither CONTRACTOR nor its employees are employees of the State. In accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA, Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana. CONTRACTOR shall provide proof of compliance in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status and maintain such insurance, exemption, or corporate officer status for the duration of the contract. CONTRACTOR shall submit a copy of all renewals of expired insurance and exemptions to: Department of Corrections, Contracts Management Bureau, Attn: Contracts Manager, PO Box 201301, Helena, MT 59620-1301.

9. HOLD HARMLESS AND INDEMNIFICATION

CONTRACTOR agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of CONTRACTOR'S employees or third parties on account of bodily or personal injuries,

death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of CONTRACTOR and/or its agents, employees, representatives, assigns, or subcontractors - except the sole negligence of the State under this agreement.

10. INSURANCE



- A. **General Requirements:** CONTRACTOR shall maintain for the duration of the Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by CONTRACTOR, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

Primary Insurance: CONTRACTOR'S insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of CONTRACTOR'S insurance and shall not contribute with it.

Deductibles and Self-Insured Retentions: Any deductible or self-insured retention must be declared to and approved by DEPARTMENT. At the request of DEPARTMENT either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, and volunteers; or (2) CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

Certificate of Insurance/Endorsements: A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverage's must be received by the Contracts Manager, PO Box 201301, Helena, MT 59620-1301 prior to start of work under this Contract. CONTRACTOR must immediately notify DEPARTMENT of any material change in insurance coverage, such as changes in limits, coverage's, policy status, etc. DEPARTMENT reserves the right to require complete copies of insurance policies at all times.

- B. **Specific Requirements for Commercial General Liability:** CONTRACTOR shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$300,000 per occurrence and \$600,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of CONTRACTOR or its officers, agents, representatives, assigns or subcontractors.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered as additional insured's; for liability arising out of activities performed by or on behalf of CONTRACTOR, including the insured's general supervision of CONTRACTOR; products and completed operations; premises owned, leased, occupied, or used.

11. ACCESS AND RETENTION OF RECORDS

CONTRACTOR agrees to provide DEPARTMENT, the Legislative Auditor, or their authorized agents with access to any records necessary to determine Contract compliance (Ref. 18-1-118, MCA). CONTRACTOR agrees to create and retain all records supporting the services rendered and/or supplies delivered for a period of three years after either the completion date of this Contract or the conclusion of any claim, litigation, or exception relating to this Contract taken by the State of Montana or a third party.

12. PUBLIC INFORMATION

CONTRACTOR recognizes that this Contract may be subject to public inspection pursuant to Article 2, § 9 of the Montana Constitution. DEPARTMENT has a limited ability to assert a privacy interest in the subject matter of the Contract particularly with respect to information which is in the nature of a "trade secret" as the phrase is defined in federal law. In any event, CONTRACTOR agrees to hold DEPARTMENT harmless from any injury caused, in whole or in part, by the review of this agreement by an entity authorized to do so pursuant to Article 2, § 9 of the Montana Constitution.

13. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

CONTRACTOR shall not assign, sell, transfer, subcontract or sublet rights, or delegate duties under this Contract, in whole or in part, without the prior written approval of DEPARTMENT. No such written approval shall relieve CONTRACTOR of any obligation of this Contract and any transferee or subcontractor shall be considered the agent of CONTRACTOR. CONTRACTOR shall remain liable as between the original parties to the Contract as if no such assignment had occurred.

14. AMENDMENTS

All amendments to this Contract shall be in writing and signed by the parties.

15. COMPLIANCE WITH LAWS

CONTRACTOR must, in performance of work under the Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by CONTRACTOR subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, CONTRACTOR agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by persons performing the Contract.

16. TERMINATION AND DEFAULT

- A. DEPARTMENT may, by written notice to CONTRACTOR, terminate this Contract in whole or in part at any time CONTRACTOR fails to perform as required in this Contract.
- B. Either party may terminate this Contract without cause by providing written notice to the other as described in this paragraph. The party desiring to terminate the Contract shall provide written notice to the other, which notice will establish a termination date not less than 30 days from the date of such notice. The termination of this Contract shall not limit any party's pursuit of remedies provided in this Contract or otherwise available under the laws of the State of Montana.
- C. DEPARTMENT, at its sole discretion, may, without 30 days notice, terminate or reduce the scope of this Contract if available funding is reduced for any reason.
- D. Failure on the part of either party to perform the provisions of this Contract constitutes default. Default may result in pursuit of a remedy for breach of Contract including, but not limited to, monetary damages or specific performance.

17. CHOICE OF LAW AND VENUE

The laws of Montana govern this Contract. The parties agree that any mediation, arbitration or litigation concerning this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees (Ref. 18-1-401, MCA).

18. LICENSURE

CONTRACTOR agrees to provide copies of current licenses and certifications that register CONTRACTOR and any associates performing under this Contract.

19. INTEGRATION

This Contract contains the entire agreement between the parties and no statement, promises, or inducements made by either party or agents thereof, which are not contained in the written Contract, shall be binding or valid. This Contract shall not be enlarged, modified, or altered except upon written agreement signed by all parties to the Contract.

20. SEVERABILITY

A declaration by any court, or any other binding legal source, that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.

21. COMPLETED CONTRACT

DEPARTMENT cannot disburse any payments under this Contract until a fully executed original Contract is returned to the Department of Corrections, Contracts Management Bureau, PO Box 201301, 1539 11th Avenue, Helena, MT 59620-1301.

SIGNATURE

DEPARTMENT

Gayle Lambert

Gayle Lambert, Administrator
Montana Correctional Enterprises

6/26/09

Date

CONTRACTOR

Shad Bailey

Shad Bailey

7-23-09

Date

Approved for Legal Content by:

Diana L. Koch

Legal Counsel
Department of Corrections

6/26/09

Date

Fiscal Year 2007 Performance Report Summary

Grants to States for Workplace and Community Transition Training For Incarcerated Youth Offenders Program

Please note: This summary sheet is to be submitted as a supplement to the required annual performance report.

Name of State _____

2006-2007 Academic Year (October 1, 2006 through September 30, 2007)

Total number of participants during the academic year <i>(Unduplicated)</i>	Total number of completers for the academic year <i>(This is the GPRA total for your state. Please detail the completers in boxes below)</i>	Total number of participants released during project year. <i>(May include students served in prior academic years if released during project period)</i>	Total number employed within a year of release. <i>(May include students served in prior academic years if released during project period)</i>	Total number of those released participants returning to state incarceration within a year. <i>(Those who returned during the project period)</i>

Academic/Vocational Success of those completers

The total of these sections should add up to the number represented in the "Completers for the Academic Year" column above

AA Degree	BA Degree	Postsecondary/ Vocational Certificate	Other**

****Note:** If column "Other" is used, please provide an explanation here:

Who may we contact with questions regarding the information on this sheet?

Name:

Phone:

Email: